

ADMINISTRATIVE
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OLC 72-1034
20 September 1972

MEMORANDUM FOR THE RECORD

SUBJECT: Meeting with Jack Brady, House Foreign Affairs Committee Staff

1. Met with Jack Brady, House Foreign Affairs Committee staff, today and gave him a copy of the extract from the 17 August 1972 Village Voice entitled "Victory Over the CIA." This item is a letter to the editor from B. Brooks Thomas, Vice President and General Counsel of Harper and Row, in response to Nat Hentoff's column concerning Harper and Row's release of Alfred McCoy's book, The Politics of Heroin in Southeast Asia, to CIA prior to publication. I also gave Brady a copy of [REDACTED] DDP/NARCOG, paper entitled "The Heroin Addict in the Criminal Justice System," and an informal statement which was worked out with Joe [REDACTED] FE Division, concerning the dismissal of two employees by Air America for smuggling opium: "2 baggage handlers--Air America--were reported smuggling opium 1968 from Laos to Viet Nam--charges were investigated by AA and the individuals terminated."

STATINTL

[REDACTED]
Assistant Legislative Counsel

Distribution:

Original - Addressee
1 - Chrono

OLC/JGO:mmc (21 September 1972)

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JP

Victory over the CIA

Dear Sir:

Although one has the feeling that to respond to Nat Hentoff's recent column about Harper & Row allowing the CIA to see a book prior to publication (*Voice*, August 10) is only to encourage him to even more dubious efforts, the enormity of his assertions and their potential impact on the author community compel me to put Harper's side on the record at least once.

Stripped of its rhetoric, Hentoff's article boils down to the assertions that Harper & Row "surrendered" to "pressure" from the CIA by giving it the opportunity to see the book prior to publication (which Hentoff says is the same as giving them the power to revise it), and that the publisher unfairly persuaded the author into going along with its point of view despite his own feelings to the contrary.

Hentoff's claim that what is involved here is prior restraint is a classic exercise in bootstrap logic. Although he admits that the CIA's request (which he has apparently not seen, although everyone else has, and which is not, as he says, "confidential") is only for permission to review the book, he nevertheless asserts that "what the CIA is after, the wording of the letter makes clear, is permission to revise." Later in his article he escalates this to "an attempt at prior restraint (review)."

Since the real nature of the CIA's request (demand) is central to the issue, I will quote from it: "In the light of the pernicious nature of the drug traffic, allegations concerning involvement of the U. S. government therein or the participation of American citizens should be made only if based on hard evidence. It is our belief that no reputable publishing house would wish to publish such allegations without being assured that the supporting evidence was valid . . . we believe that we could demonstrate to you that a considerable number of Mr. McCoy's claims about this agency's alleged involvement are totally false and without foundation, a number of which

torted beyond recognition, and none is based on convincing evidence."

Clearly what is involved here is not a threat but a request, not an attempt to revise but an offer to prove matters which, if they could be proven, might well lead both publisher and author to make changes of their own free will. To refuse even to entertain such an offer seems to us egoistic and irresponsible. We do not want to play God with men's lives, or even with their reputations. Although we have great confidence in the author and in the book, we do not find it utterly inconceivable that someone else may know something we don't. This is simply a matter of intellectual honesty; to convert it into some form of political surrender is an exercise in knee-jerk paranoia.

As everyone knows by now, the CIA did submit their comments, which we and the author carefully considered and rejected as wholly unpersuasive. The book is being published this week without a word changed. And yet Hentoff bristles at calling this a victory. We gave away, he says, a full adversary proceeding in a court of law which would have protected the author's rights and the public's as well. Yet it was just such a proceeding that we sought to avoid or, failing that, win, by making the book available voluntarily.

We are in the business of publishing books, not litigating with the CIA. Whatever it may do for the ego, such litigation is enormously expensive for both author and publisher, and it can tie up publication for months and even years. The CIA could commence an action whether we let them see the book or not, and the moment the issue was joined the Court could, and probably would, have let them see the book anyway. One of the reasons for volunteering the book was in the hope of avoiding such expense and delay by convincing the CIA that they had no case for court action. Another was to put us in the strongest possible position should the CIA go to court anyway, in which

them to the limit. It seems rather ungenerous to fault this strategy for having paid off, as it appears to have done.

But, says Hentoff, there is the "chilling effect" to consider. Just what got chilled in this case? What difference did it make that the CIA saw the book three weeks earlier than it otherwise would have? This is not a series of newspaper exposes where future sources might dry up. And the CIA can intimidate past sources just as well after publication as before, even assuming they need our copy of the manuscript to do it.

I am not saying there is no such thing as a "chilling effect." I am only saying that its importance must be judged on the circumstances of each individual case, and weighed in the balance against the danger of pursuing the opposite course. In this case I believe the danger of "chill" was much less than the danger of publishing serious allegations which might turn out to be unsupportable. I believe that the action of the Freedom to Read Committee, which Hentoff criticizes, was based on a recognition of the delicacy of this balance. Hentoff's simplistic analysis does not, of course, even admit the existence of the problem.

Finally, Hentoff scores Harper & Row for having successfully persuaded the author to go along with its point of view. It does not take much reading between the lines to perceive that what he really resents is the notion that a publisher should have a point of view on such a matter. Yet a publishing house is not a public utility like the telephone company, required by law to transmit messages for anyone who can pay the fare.

Many people associate the credibility of a work with the reputation of the publisher as well as with that of the author, and most are quick to hold the publisher to account when things go wrong. The Clifford Irving debacle is only one of several recent reminders of this fact of life. Surely the author has no more right to force the publisher to publish against his scruples than the publisher has to force the au-

In this case, the author had other equally attractive publishing options which did not involve showing the manuscript to the CIA. The fact that he chose to go along with us rather than publish elsewhere only reflects the fact that our commitment to the book was clearly more important to him than our difference of opinion about showing it to the CIA.

—B. Brooks Thomas
Vice President &
General Counsel
Harper & Row
East 53rd Street

Nat Hentoff will reply in next week's issue.

MEMORANDUM FOR:

*OLC file journal
w/ journal
2/1/72*

STATINTL

*Attached is copy of
my summer paper which
I promised to send to
Brady the other day.
Please transmit at your
convenience.*

STATINTL

FORM NO. 101 REPLACES FORM 10-101
1 AUG 54 WHICH MAY BE USED.

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